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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,751	02/09/2004	Jerry R. Grychowski	6298-449	6148
757 7590 09/11/2007 BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			EXAMINER PATEL, NIHIR B	
			ART UNIT 3772	PAPER NUMBER
			MAIL DATE 09/11/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/774,751	Applicant(s) GRYCHOWSKI ET AL.	
	Examiner Nihir Patel	Art Unit 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on June 11th, 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-14, 24-30, 32, 33 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 3-14, 24-27, 29, 32 and 33 is/are allowed.
- 6) ☒ Claim(s) 28 and 30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed on June 11th, 2007, with respect to **claims 3, 4, 24 and 33** have been fully considered and are persuasive. The previous rejection(s) of the office action dated February 8th, 2007 has been withdrawn.
2. Applicant's arguments filed June 11th, 2007 with respect to **claims 28 and 30** have been fully considered but they are not persuasive. In reference to claims 28 and 30, the applicant argues that Farmer does not disclose or suggest any connection between an exhaust conduit and a second inhalation conduit coupled to the input end of the reservoir. The examiner would like to point out that the applicant is arguing features that are not claimed specifically "**...second inhalation conduit coupled to the input end of the reservoir**". The applicant also argues that Farmer does not disclose or suggest connecting the "exhaust conduit" to any other structures, whether a ventilator or a WYE connector or both. The examiner again disagrees. The description of the prior art and objectives of the invention clearly states "It is commonplace to utilize a collapsible reservoir with a MDI canister for discharge therein. Such devices are often used in ventilator breathing circuits. Therefore, it would have been obvious to modify Farmer's invention by providing an inhalation conduit that comprises an endotracheal tube and a WYE connector as taught by Richardson.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim **30** is rejected under 35 U.S.C. 102(b) as being anticipated by Farmer (US 2002/0069870).

5. **As to claim 30**, Farmer teaches an apparatus that comprises a chamber housing defining an interior space comprising an input end and an output end (**see figure 1 and paragraph [0022]**); a one-way inhalation valve **16** (**see figure 1**) positioned upstream of the interior space, the one way inhalation valve operative to permit a flow of gases into the interior space of the chamber housing; a first inhalation conduit **17** (**see figure 1 and paragraph [0022]**) communicating with the output end of the chamber, the first conduit adapted to transmit medication to the patient; a second inhalation conduit (**see figure 1 the portion located next to the one way valve and paragraph [0022]**) communicating with the input end of the chamber housing, wherein the one-way inhalation valve is located in the second conduit inhalation conduit, the second inhalation conduit comprising an oxygen intake line communicating with the one way inhalation valve; an exhaust conduit (**see figure 1; the portion located just before the exhaust valve 21**) communicating with the first inhalation conduit **17**; a one way exhaust valve **21** located in the exhaust conduit, the one way exhaust valve adapted to prevent a backflow of gas from the exhaust conduit into the first inhalation conduit; and a pressurized metered dose inhaler **11** in flow communication with the second inhalation conduit downstream of the one way inhalation valve (**see figure 1**).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Farmer (US 20020069870) in view of Richardson et al. (US 6,279,574).

9. As to claim 28, Farmer discloses the applicant's invention as claimed with the exception of providing an inhalation conduit that comprises an endotracheal tube. Richardson discloses an apparatus that does provide an inhalation conduit that comprises an endotracheal tube as well as a WYE connector, which are well known in the respiratory art. Therefore it would have been obvious to modify Farmer's invention by providing an inhalation conduit that comprises an endotracheal tube and a WYE connector as taught by Richardson.

Allowable Subject Matter

10. Claims 1, 3-14, 24-27, 29, 32 and 33 are allowed. The prior art does not disclose a first inhalation conduit communicating with the output end of the chamber, the first inhalation conduit comprising an inlet communicating with the output end of the chamber housing and an outlet adapted to transmit medication to the patient, wherein the inlet and outlet are axially aligned with the output end of the chamber.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit 3772



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9/4/07